

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

BECKLEY DIVISION

SURESH H. SMALL,

Petitioner,

v.

Case No. 5:23-cv-00658

WARDEN HOLZAPFEL,

Respondent.

MEMORANDUM OPINION and ORDER

Currently pending is Petitioner's Motion to Appoint Counsel, (ECF No. 17). For the following reasons, the Court **DENIES** the motion.

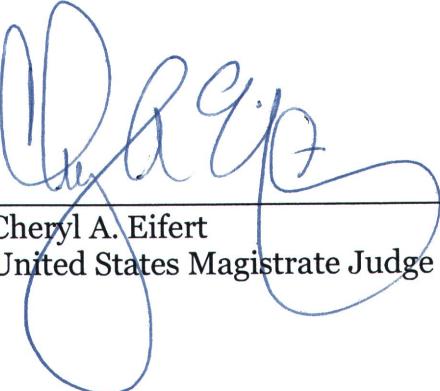
The Criminal Justice Act ("CJA"), 18 U.S.C. § 3006A, authorizes United States District Courts to appoint counsel to represent financially eligible individuals in habeas actions brought pursuant to 28 U.S.C. § 2241, "whenever the United States magistrate judge or the court determines that the interests of justice so require." 18 U.S.C. § 3006A(a)(2)(B). This standard is similar to the one applied in determining whether to appoint counsel in civil actions governed by 28 U.S.C. § 1915(e)(1), which states that the appointment of counsel rests within the discretion of the court. Petitioner has no constitutional right to counsel in this case. Whether counsel should be appointed depends upon several factors, including (1) the type and complexity of the case; (2) the ability of the litigant to adequately investigate and present his claim; (3) the likelihood of success on the merits of the application; and (4) the apparent need for an evidentiary hearing in order to resolve the case. *See, e.g. Whisenant v. Yuam*, 739 F.2d 160 (4th Cir. 1984)

(abrogated on other grounds by *Mallard v. United States Dist. Court*, 490 U.S. 296 (1989)); *Hoggard v. Purkett*, 29 F.3d 469 (8th Cir. 1994).

Having reviewed the filings made by Petitioner to date, he appears quite capable of presenting his arguments. The issues have been briefed and are not particularly complex or unique, and the need for an evidentiary hearing is unlikely at this time. Therefore, the appointment of counsel is not appropriate. It is so **ORDERED**.

The Clerk is directed to provide a copy of this Order to Petitioner and counsel of record.

ENTERED: April 26, 2024



Cheryl A. Eifert
United States Magistrate Judge